

NOTE:

The attached pages are corrected pages and should be substituted for the corresponding pages in the Proceedings in Chambers, dated Fri 20 Dec 46.

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The proceeding was resumed, pursuant to adjournment, at 0900.

MR. BLEWETT: Can we continue the discussion, your Honor?

THE PRESIDENT: Yes, Mr. Blewett. I would like to listen.

MR. BLEWETT: This matter has not been brought up by one person; the whole group has discussed this for several months and at many meetings, and there was not unanimity in the meetings. One of the groups took the stand that by right they could make this motion and that the Court, of course, could determine whether or not an argument should be heard. But the fact of the motion itself was assumed from our practice at home. I do not know whether it is the rules of Court or whether it is the rules of procedure.

THE PRESIDENT: Well, subject to what the Charter says, yes.

MR. BLEWETT: We would just simply, naturally, take it for granted.

THE PRESIDENT: If the Charter denies it expressly or impliedly, of course, then it could not be taken for granted.

MR. BLEWETT: If we can assume that we have

something to prepare our case after the prosecution's case is over, why, I shall abide by the Court's decision.

THE PRESIDENT: I do not know what the Judges think at all on that, but I feel sure that there will be no time granted for that purpose. If it involves the Judges postponing their sitting or taking a vacation, or something like that, it would not be granted. It is just my feeling. The trial is going to take far longer than we anticipated. We have not wasted any time. I think, as a matter of fact, that if this trial were conducted wholly in English, it would constitute a high-speed record. Already we have taken far more evidence than Nuernberg took in the same time.

MR. McMANUS: If your Honor, please, prosecution --

THE PRESIDENT: Nevertheless, we hope to finish this trial early next year, without prejudice to the fair trial of the accused.

MR. McMANUS: I am not thinking about the expediency of the trial. I am thinking about a proper and fair defense that should be placed before this Court.

THE PRESIDENT: Well, I have been conducting

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is all that is to be considered on this motion. What we might do on our case has no place in this discussion.

MR. LEVIN: I am certainly in accord with Mr. Logan. There can be no question about that as I indicated. The prosecution was not concerned with our motions exactly in the same form as we might make a motion and objection to the evidence, or "the question is leading". It is a matter of criminal procedure in a trial of criminal action.

THE PRESIDENT: You should be very careful about moving a Court to, say, dismiss the case on the ground that there is no evidence. Of course, if you do not take up that stand, and you call the accused, or if the Court is against it, and then you call an accused, the evidence can be supplied by the accused. But a party making a motion of that kind generally stands on it.

MR. BLEWETT: We do not put any defense at all. Of course, we have an appellate right there, naturally, which we do not have here.

THE PRESIDENT: That question has come before the English Courts in several cases, and Raydon is one, and there is some variety of opinion. It is not as clear as day. I do not express any opinion on

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15

THE PRESIDENT: Have you information that he was misrepresenting the Japanese attitude to the Germans?

MR. CAUDLE: At least our clients.

THE PRESIDENT: Did you get that information from Stammer?

MR. CUNNINGHAM: I got mine out of the Foreign Office.

THE PRESIDENT: From whom?

MR. CAUDLE: The Japanese Foreign Office.

THE PRESIDENT: Which man?

MR. CAUDLE: Mr. OTA.

THE PRESIDENT: Will you give that evidence?

MR. CAUDLE: He says that it was the rumor going round. I won't make a general statement.

THE PRESIDENT: What does Stammer say?

MR. CUNNINGHAM: Stammer says he was sent here by Ribbentrop because the stories between Ott and the ambassador to Germany were so inconsistent that he wanted to get a true story from Tokyo, and Ribbentrop told me the same thing.

THE PRESIDENT: That would suggest that Ott was misleading the German government.

MR. CUNNINGHAM: Ott was misleading his

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of the accused be not taken to the box to give evidence the court would require him to go to the box so that he could be examined by Members of the Tribunal. I do not know. I do not know what my colleagues feel about that. You see, different nations have different ways. In some nations a court takes a bigger part than the British or American courts, or British and Russian.

MR. LEVIN: It doesn't --

MR. BROOKS: While you are on that, your Honor; as I recall from reading earlier that it is borne in case the accused does not take the witness stand that the court can comment on that which is unusual. According to our courts the court does not comment and the witness will refuse to take the stand.

MR. JUSTICE MANSFIELD: Refuse to answer, yes, sir.

MR. BROOKS: I know there is something in there.

MR. TAVENNER: If they live.

THE PRESIDENT: I wouldn't decide any of these questions of course without consulting the other Members.

MR. TAVENNER: May I point out to you one further consideration in regard to it? I find on examining the Charter that was issued by SCAP on



procedure as to whether or not the Court would feel that it would be granting the accused an expeditious trial in dealing with such motions because if the issues can be narrowed, if the prosecution has failed to prove its case on certain counts, they should be stricken, because, after all, the burden has been on the prosecution right along in the case and that, if, when prosecution finishes its case and there is no evidence or slight evidence, and the Court feels that the case should be dismissed as to certain accused on certain points, that should be done. It is merely a procedural matter. It is not affecting a substantial right of the prosecution, and, I think, the Court in its inherent power would have a right to entertain such motions even though it is not specifically granted in the Charter. Certainly it is a right that all English-speaking nations recognize and insofar as requiring the accused to take the stand.

THE PRESIDENT: There is only one charge - there is ordinarily only one count in an indictment. There may, in certain special cases, be more than one; therefore, you deal with the whole lot at once. But here there are fifty-five.

MR. LOGAN: Which makes it different from other counts.



THE PRESIDENT: I may say on 28 and 29 there is no evidence but the trial goes ahead and the accused give evidence on the others, and, of course, when they give evidence they may supply evidence on the other counts upon which the prosecution have failed to give evidence. Then what do you do? Then the men are clearly guilty on the whole evidence, but I would say it would be useless to try to deal with them because you have struck out the counts on which there was no evidence when the prosecution finished. The position is somewhat different in a national court where there is only the one charge substantially. Duplicity is not allowed except in special cases where one crime is really part of another.

MR. LOGAN: Well, it may even be, your Honor, that prosecution has failed to prove any count as to certain defendants and why should they be held required to put therein proof. I am speaking now of all counts.

THE PRESIDENT: Very often accused giving evidence supplies evidence against himself where the prosecution has failed to do so. He may be cross-examined into making admissions which supply something lacking in the prosecution's case.

MR. LEVIN: Mr. President --

THE PRESIDENT: Now, I should say a defendant

1 Perhaps you should ask us to stand this  
2 witness down, as you did before, Mr. Logan.

3 MR. LOGAN: I would like to have a ruling  
4 on this affidavit, if your Honor please. I don't  
5 think there can be any presumption, if the Tribunal  
6 please, that these documents were deliberately  
7 burnt in view of the statement in this affidavit,  
8 and I think the mere statement they were burnt  
9 properly answers the absence of the documents, and  
10 that is all we have been asked to do.

11 THE PRESIDENT: These are matters of  
12 vital importance. We are not insisting upon the  
13 observance of the strict technical rule, merely.

14 We will recess for fifteen minutes.

15 (Whereupon, at 1045, a recess was  
16 taken until 100, after which the proceeding-  
17 ings were resumed as follows:)

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on the usual terms?

1 THE PRESIDENT: He is excused accordingly.

2 (Whereupon the witness was excused.)

3 MR. ROBERTS: We offer in evidence defense  
4 document 1131, which is a statement emanating from  
5 the Foreign Office concerning the attempt on the  
6 part of Chinese censors to manipulate dispatches of  
7 foreign correspondents and is intended to correct  
8 the distortion of facts by the Chinese censors.  
9

10 THE PRESIDENT: Brigadier Nolan.

11 BRIGADIER NOLAN: May it please the Tribunal,  
12 we object to document 1131. It is, we submit, a  
13 press dispatch of a kind that has been rejected on  
14 numerous occasions by the Tribunal. It purports to  
15 say what was in a dispatch and how it was altered by  
16 the censors.

17 MR. ROBERTS: I think this press dispatch  
18 objection is being slightly overused by the prosecu-  
19 tion.

20 THE PRESIDENT: Press release.

21 MR. ROBERTS: Press release.

22 The certificate states it to be an exact  
23 and true copy of an official document of the Japanese  
24 Foreign Office, and it states certain facts with  
25 reference to bombing of the Sincere Department Store.

1 THE PRESIDENT: By a majority, the Tribunal  
2 upholds the objection and rejects the document.

3 It is too late now to take any other business  
4 today.

5 We will adjourn now until half past nine  
6 Monday next.

7 (Whereupon, at 1555, an adjournment was  
8 taken until Monday, 5 May 1947, at 0930.)  
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DIRECT

1 subordinate units of the Army or some other subject,  
2 when a telegram was forwarded from the Headquarters  
3 of the Army by the one in charge."

4 MR. BLAKENEY: Shall I omit the reading  
5 of the telegram?

6 THE PRESIDENT: No, you can go on with the  
7 next sentence.

8 MR. BLAKENEY: (Reading)

9 "This telegram was a confidential telegram  
10 from the Commander of the 23d Division (Hailar  
11 Defense Commander) to the Commander of the Kwantung  
12 Army."

13 THE PRESIDENT: That is where you stop.

14 MR. BLAKENEY: Next paragraph.

15 THE PRESIDENT: No, you still have a  
16 sentence in that paragraph.

17 MR. BLAKENEY: Well, that is part of the  
18 contents of the telegram, of course.

19 THE PRESIDENT: I do not think it is. It  
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1 MARSHAL OF THE COURT: The International  
2 Military Tribunal for the Far East is now in  
3 session.

4 THE PRESIDENT: I refer to page 23,017 of  
5 the record. As lines 12 to 18 inclusive were not in  
6 evidence that part of the exhibit was not read and  
7 should not appear in the transcript.

8 All of the accused are present except the  
9 accused TOJO, who, with the Court's permission, is  
10 interviewing his counsel outside the court room.

11 Colonel Smirnov.

12 COLONEL SMIRNOV: Thank you, your Honor.

13 - - -

14 R I P P E I O G I S U, called as a witness on  
15 behalf of the defense, resumed the stand and  
16 testified through Japanese interpreters, as  
17 follows:

18 CROSS EXAMINATION

19 BY COLONEL SMIRNOV: (Continued)

20 Q From what post were you transferred to the  
21 post of the Commander of the 6th Army?

22 A I was transferred from my former position as  
23 Chief of the 13th Division in Central China to be  
24 Commander of the 6th Army in Manchuria.

25 Q If we shall believe the list of your career

OTA

RECROSS

1 called the Arshan-Col River.

2 MR. BLAKENEY: If the Tribunal please, I  
3 think whatever demonstration the witness is making  
4 should also be made to the bench.

5 THE PRESIDENT: There is no need for him  
6 to point out any name. He can read the name,  
7 and he can underline it, if necessary.

8 MR. BLAKENEY: Unless the prosecution is  
9 willing to concede that the difference pointed out  
10 by the witness exists, I think I must insist that  
11 it be shown to the Tribunal if it is going to be a  
12 matter in dispute.

13 THE PRESIDENT: If you think we will be  
14 better informed as a result, let us see that. He  
15 said there was a difference in words. Let him point  
16 out the words. What more can he do?

17 COLONEL SMIRNOV: Your Honor, I intended to ask  
18 the same, but a little later on; but previous to the  
19 time the map is shown to the bench I would like to  
20 ask your direction to determine the names of the places  
21 through which the border line passes according to the  
22 agreement between Molotov and TOGO.

23 THE PRESIDENT: One difficulty at a time.  
24 That is another matter entirely. Let us clear up this  
25 point about the alleged difference between the maps.



KASAHARA

CROSS

Q I remind you. I quote the second part of the document, second page of the English text. I quote:

"There must be many essentials for carrying out war against the Soviet Union, but the following are the most important.

"1. Necessity of Annihilating the Enemy.

"We need not expatiate on the necessity for a lightning war in view of its situation. But the far eastern territory of the Soviet Union is very far from its political and industrial centre, and Japan cannot extinguish the enemy altogether by mere occupation of that territory. Merely to defeat them in battle is not enough. By a war of annihilation, we can deliver a heavy psychological blow to the Soviet people and await, together with the measures mentioned in paragraph 3, their internal collapse. There is no alternative for us. Therefore, from the control of the anti-Soviet war down to the organization, equipment and training of troops, all must be carried out according to the great principle of a war of annihilation."

A All that was written by you, Mr. Witness, was it?

A Yes, I wrote that.

Q Mr. Witness, didn't you plan also the following

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1 MARSHAL OF THE COURT: The International  
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: Mr. Cunningham.  
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5 H E I N R I C H S T A H M E R, called as a  
6 witness on behalf of the defense, resumed  
7 the stand and testified as follows:

8 MR. CUNNINGHAM: If the Tribunal please,  
9 I now read exhibit 2744. May it be understood  
10 that only that part of the exhibit which is read  
11 is considered part of the record?

12 THE PRESIDENT: The parts objected to and  
13 disallowed will not be read and will not be part  
14 of the record.

15 MR. CUNNINGHAM: There is one paragraph  
16 that was not objected to, next to the last page,  
17 that I want to eliminate due to the fact that I  
18 do not wish to divorce it from its context in the  
19 rest of the paragraphs in that subdivision.

20 THE PRESIDENT: Read everything except  
21 the parts disallowed on objection. You may not read  
22 any paragraph, or parts thereof, successfully objected t  
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24 MR. CUNNINGHAM: By the same token may  
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21 the parts disallowed on objection. You may not read  
22 any paragraph, or parts thereof, successfully objected to

23 MR. CUNNINGHAM: By the same token may  
24 I eliminate one paragraph that was not objected  
25 to?

1 this subject.

2 Q How did you come to deal with Military  
3 Attache OSHIMA on this question?

4 MR. TAVENNER: Objection is made, if the  
5 Tribunal please, on the ground it is covered in the  
6 general examination.

7 THE PRESIDENT: That is so.

8 Mr. Blakeney, before you go further, I am  
9 asked to put this: How could German knowledge of  
10 negotiations between England and the United States be  
11 any defense or exculpation of the accused? Knowledge  
12 of the accused might be. It may be that when that  
13 was drafted Mr. Logan was examining the witness.

14 I could only suggest that you are charged  
15 with conspiring with others, obviously including the  
16 Germans, and anything that would tend to exculpate  
17 them could be relied upon by you. If I understand  
18 the charges rightly, the allegation of conspiracy is  
19 not confined to the Pacific, but extends to Europe.  
20 Neurnberg certainly thought the charges before them  
21 embraced the Pacific.

22 MR. BLAKENEY: Shall Mr. Logan answer?

23 THE PRESIDENT: He can, if he wishes.

24 MR. LOGAN: In case there is any doubt, your  
25 Honor, in the mind of the Judge who asked the question,



STAHMER

DIRECT

1 Minister, but I don't know what part he took in the  
2 negotiations; I did not talk with him.

3 Q Did he ever sit in on any of the discussions?

4 A No, he was not present. There were always  
5 only MATSUOKA and Ott present, and in the end I saw  
6 Mr. SAITO and Mr. MATSUMOTO; only for technical,  
7 small details, not in the meeting.

8 Q Did you ever discuss the Tri-Partite Pact  
9 in any way whatsoever with the accused?

10 A I do not remember. It may be that we  
11 talked it over during these dinners and lunches after  
12 the signatures to the Pact.

13 Q Did you have any discussion with him prior  
14 to the conclusion of the pact?

15 A No, I talked only with MATSUOKA.

16 Q Do you know how many times Mr. SHIRATORI  
17 met Mr. Ribbentrop?

18 A He could have met him only during the  
19 fiftieth birthday of Hitler, in April 1938 -- 1939.

20 Q Then you mean they met only once?

21 A Only during those two or three days -- I do  
22 not know exactly how long he stayed -- In April '39.

23 Q Then, under the circumstances, Mr. Ribben-  
24 trop could not have known Mr. SHIRATORI very well,  
25 is that correct?

STAHMER

DIRECT

1           A    That is correct.

2           Q    With respect to the strengthening of the  
3   Anti-Comintern Pact, you state that most of the  
4   negotiations were made with Italy through Germany.  
5   Will you please explain that, sir.

6           A    During the negotiations in Munich, in  
7   September, 1939, Ribbentrop and Hitler talked at first  
8   about this idea with Mussolini, and Mussolini agreed  
9   immediately, principally, and told them he must think  
10   it over when a suitable time would become to go on  
11   with these negotiations -- to begin with these ne-  
12   gotiations from the side of Italy. As far as I  
13   remember, he told that in beginning of January,  
14   1940 -- not 1939.

15                   I was wrong. This was in beginning of 1939.

16           Q    Those negotiations were carried on strictly  
17   between Germany and Italy through either Mussolini  
18   or Ciano or Ribbentrop or Mr. Hitler, is that correct?

19           A    That is correct. In October, 1938, Ribben-  
20   trop again -- Ribbentrop went to Rome and talked again  
21   with Mussolini and with Ciano; and later -- at that  
22   time Italian Ambassador in Berlin, Attolico, was  
23   informed, too, and worked together in these negotia-  
24   tions.  
25

MR. CAUDLE: Thank you.

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24,517

STAHMER

CROSS

1 immediate work, for my work.

2 Q Well, when you arrived here----

3 THE PRESIDENT: We will recess for 15 minutes.

4 (Whereupon, at 1045, a recess was  
5 taken until 1100, after which the proceedings were  
6 resumed as follows:)

7 MARSHALL OF THE COURT: The International  
8 Military Tribunal for the Far East is now resumed.

9 THE PRESIDENT: I give the judgment of the  
10 Tribunal on the defense motion praying for production  
11 of witnesses for cross-examination or, alternatively,  
12 to strike their affidavits.

13 The Tribunal will not take into consideration  
14 the evidence of Semyonov or Rodzaevsky; accept  
15 de bene esse the affidavits of deponents MIYAKE,  
16 KUSABE and NOHARA; orders the prosecution to produce  
17 for cross-examination the other witnesses mentioned  
18 in the said defense motion within a period of two  
19 months from this date or within such longer period  
20 as may on cause shown be approved by the Tribunal  
21 or, alternatively, to give convincing reasons within  
22 the said period why they are not able to produce the  
23 said witnesses. The Tribunal will disregard the  
24 affidavits of any one or more of the deponents last  
25 mentioned in respect of whom the prosecution fails

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1           A    I do not know.

2           MR. CUNNINGHAM: Now, in order to show the  
3 background for a document which we wish to introduce  
4 as an exhibit, and to show the participants in the  
5 negotiations on the Tri-Partite Pact which have been  
6 described to this witness, I ask that the witness be  
7 shown defense document 1664 for identification pur-  
8 poses.

9           THE PRESIDENT: Mr. Tavenner.

10          MR. TAVENNER: If the Tribunal please,  
11 objection is made to the attempt to introduce a docu-  
12 ment in redirect examination.

13          THE PRESIDENT: That alone could be no  
14 ground for objection. It would be possible to get in  
15 a document on redirect examination, but whether this  
16 document can be got in is another question.

17          MR. TAVENNER: I had not completed my state-  
18 ment, "which is not based upon any evidence in cross-  
19 examination."

20          THE PRESIDENT: It looks like a photograph,  
21 and without Mr. Cunningham's help I cannot see how any  
22 question put in cross-examination or how any answer  
23 given in cross-examination could justify the admission  
24 of a document like this, a photograph, in re-examination.

25          MR. CUNNINGHAM: Well, I don't remember saying



1       ments away and get it into proper order, we shall  
2       probably have no objection, but in its present form it  
3       is open to all the objections I have mentioned.

4               THE PRESIDENT: Mr. Cunningham.

5               MR. CUNNINGHAM: Well, your Honor, I think  
6       anybody who takes this document and reads it in the  
7       order in which it has been arranged will have no diffi-  
8       culty. That is the way I understand it. As I under-  
9       stand it, the documents are arranged in exactly the  
10      same way they are arranged in the book from which  
11      they were taken.

12              THE PRESIDENT: Is the book certified to in  
13      the usual way?

14              MR. CUNNINGHAM: The book is an official  
15      document book of the Japanese Foreign Office, with the  
16      certificate attached.

17              THE PRESIDENT: We are not insisting on copies  
18      of the certificates being given to us, but we do want to  
19      be satisfied that these things are authenticated as  
20      far as they can be. Have you looked at the original,  
21      Mr. Carr?

22              MR. COMYNS CARR: Your Honor, I haven't seen  
23      the original. The person who is alleged to have pre-  
24      pared the summary is alive, and surely it must be  
25      possible for the defense to get him to show, if the

1 rules, of course, which have not been compiled with,  
2 I understand.

3 MR. CUNNINGHAM: Well, your Honor, I submit  
4 that the document has been on file.

5 THE PRESIDENT: Formerly, you required a  
6 specific order of the Court in Chambers, but latterly  
7 that was obviated by getting an agreement of the parties,  
8 and I understood there was some common understanding  
9 about those matters.

10 MR. CUNNINGHAM: Well, that is my understand-  
11 ing, your Honor, that we deposit the document, or the  
12 book from which it is taken, and if the prosecution  
13 looks it over and wants the rest of it and makes a  
14 demand, that we furnish it. But, it is my submission  
15 that the other features of this document are irrelevant,  
16 and they would not do you any good, and that is the  
17 reason why I have not offered the rest of the document.

18 THE PRESIDENT: Well, the admission at this  
19 stage would appear to need an order in Chambers or an  
20 agreement of the parties.

21 MR. CUNNINGHAM: That is definitely not my under-  
22 standing of the rule, your Honor. My understanding is  
23 that if the prosecution makes a demand upon us, that we  
24 give them the balance and not wait until we present it  
25 in court and then objection is made to it and then we

KRETSCHMER

CROSS

1 evidence relating to the negotiations that took place  
2 at this time, do you still contend that the Japanese --  
3 that the German Embassy in Japan, including yourself,  
4 did not know that the war was about to break out be-  
5 tween Japan -- that Japan was about to attack the  
6 United States and Great Britain?

7 A I speak first for me, but I think that I  
8 can speak at the same time for the embassy. We had  
9 at this time, when Ambassador KURUSU was in Washing-  
10 ton, the full impression still that Japan wished to do  
11 everything possible to avoid conflict with America,  
12 and I, as an officer, could have no understanding at  
13 this time for creating a new enemy; that means at a  
14 time when the German forces were fighting a very,  
15 very hard battle in Russia.

16 THE PRESIDENT: Were you a general officer?

17 THE WITNESS: At this time I was a colonel.  
18 I became a colonel in 1942.

19 Q But Germany, with the assistance that you  
20 gave it, encouraged Japan to enter into war at the  
21 time that Japan should choose by agreeing not to sign  
22 a separate peace pact regardless of what the reason  
23 for the war between Japan and the United States might  
24 be.

25 A I must express emphatically that I did not

NOTE:

The attached pages are corrected pages and should be substituted for the corresponding pages in the record.

24,662

KRETSCHMER

REDIRECT

1 communicated these reports which he made, in answer  
2 to the question of the prosecutor, to his government.

3 THE PRESIDENT: We can allow you to do that  
4 only if we disregard the rules agreed upon by yourself  
5 and which must be applied to all counsel without dis-  
6 crimination.

7 MR. CUNNINGHAM: When the rules interfere  
8 with the discovery of the facts I say suspend the  
9 rules.

10 THE PRESIDENT: At all events, for Mr. Cunning-  
11 ham's benefit. The objection is upheld and the question  
12 disallowed.

13 MR. CUNNINGHAM: All right. Now the next  
14 question.

15 Q General, did anyone from the Japanese General  
16 Staff ever talk with you about operational plans after  
17 the outbreak of the Pacific War?

18 THE PRESIDENT: Mr. Tavenner.

19 MR. TAVENNER: If the Tribunal please, that  
20 was matter covered by the examination in chief and the  
21 only purpose now is to attempt to have this witness  
22 repeat his testimony.

23 MR. CUNNINGHAM: I understood that the prose-  
24 cution tried to intimate that there was an operational  
25 plan in existence and that it was functioning. If they



1 peruse all the documents and the recommendations that  
2 are made to the documents.

3 MR. COMYNS CARR: Your Honor, that is why  
4 the prosecution objects to misleading comments upon  
5 other parts of the case.

6 THE PRESIDENT: They offend and provoke, but  
7 they do not mislead, rest assured.

8 MR. CUNNINGHAM: Well, there is no intention  
9 to do either, your Honor, and we are only adopting  
10 the same procedure which was followed by the prosecu-  
11 tion.

12 THE PRESIDENT: The prosecution did not offend  
13 in that respect, nor did other defense counsel --  
14 American defense counsel.

15 MR. CUNNINGHAM: I didn't hear that last.

16 (Whereupon, the statement of the  
17 President was read by the official court  
18 reporter.)

19 MR. CUNNINGHAM: Well, I should like to have  
20 you particularize, your Honor, if you are making an  
21 allegation against me.

22 THE PRESIDENT: The transcript is your answer.

23 MR. CUNNINGHAM: Well, by the same token,  
24 that is my only answer to the Tribunal.

25 I now call attention of the Court to exhibit

1 afternoon or tomorrow noon?

2 THE PRESIDENT: It is fixed to begin on the  
3 23d of June. If you finished many days before we would  
4 regard the recess commencing as of the time you fin-  
5 ished. But don't keep us here just for the sake of  
6 giving your colleagues another day's recess.

7 We will adjourn until half past one.

8 (Whereupon, at 1200, a recess was  
9 taken.)  
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1 MR. CUNNINGHAM: I do not wish to argue  
2 the matter; I merely wish to read it if it is  
3 considered of any value.

4 THE PRESIDENT: By a majority the Tribunal  
5 sustains the objection and rejects the document.

6 MR. CUNNINGHAM: In order to show the lack  
7 of any collaboration between Germany and Japan,  
8 I would like to tender now defense document 1662,  
9 the affidavit of von Ribbentrop, signed by him on  
10 the 15th of October, 1946, the day before he was  
11 executed.

12 THE PRESIDENT: Mr. Comyns Carr.

13 MR. COMYNS CARR: May it please the  
14 Tribunal, the Tribunal has already rejected inter-  
15 rogations of Ribbentrop and extracts from his  
16 evidence before the Nuernberg Tribunal. While  
17 this affidavit is, indeed, entitled, "In these  
18 proceedings," it was taken under circumstances  
19 which obviously preclude cross-examination, which  
20 is invited by every line of it.

21  
22  
23  
24  
25

1 of such a general character that I thought it should  
2 be made more specific.

3 THE PRESIDENT: Well, I take it there will  
4 be very little to finish it.

5 MR. CUNNINGHAM: I have been handed a note,  
6 your Honor. The SAITO affidavit, and MATSUMOTO  
7 affidavit, and document 1656 is all we know now that  
8 will be tendered, and I believe that completes the  
9 presentation of that phase of the case.

10 MR. TAVENNER: That answers my question.

11 At page 24,504 of the transcript I introduced  
12 exhibit 2746 which is a statement by Stahmer. I  
13 served it upon the defense counsel, and I have the  
14 required copies for the Tribunal now.

15 THE PRESIDENT: Circulate them, please.

16 MR. TAVENNER: That is all, your Honor.

17 THE PRESIDENT: Does any other counsel desire  
18 to address the Court before we adjourn?

19 (There was no response.)

20 THE PRESIDENT: We will adjourn until half  
21 past nine on Monday morning, the 4th of August, next.

22 (Whereupon, at 1530, an adjournment  
23 was taken until Monday, 4 August 1947, at  
24 0930.)  
25



NOTE:

The attached pages are corrected pages and should be substituted for the corresponding pages in the record.

10,939

BALLANTINE

CROSS

1 Q The message actually was in four parts, was  
2 it not?

3 A Well, I don't recall now.

4 Q Then you did not read enough of the Japanese  
5 copy so that you can confirm or deny that the original  
6 Japanese is, in effect, a totally different document  
7 from the intercept as it came to you in November, 1941?

8 A That is correct.

9 Q Now, let us turn briefly to the question of  
10 non-discriminatory commercial intercourse throughout  
11 the Pacific area, this being the third of the major  
12 points of difference between the two nations. In order  
13 to pass rapidly over the earlier stages of the con-  
14 versation on this point, may I correctly state that at  
15 various times a number of American suggestions for amend-  
16 ment to the various Japanese proposals were accepted --  
17 accepted, I mean, in the sense of being embodied by the  
18 Japanese themselves in later draft proposals?

19 A Some of the wordings were embodied, but they  
20 were largely, in effect, nullified by the various  
21 qualifications the Japanese put in.

22 Q For example, the applicability of the mutual  
23 guarantees of carrying on economic activity by peaceful  
24 means was at first limited in both the Japanese and Amer-  
25 ican versions, was it not, to the Southwest Pacific area?

BALLANTINE

CROSS

1           A   Well, I haven't got the May '31 draft before  
2 me. I don't recall definitely what our wording was in  
3 our paper.

4           Q   In any event, in the American draft of the  
5 21st of June were not these guarantees for the first  
6 time expressed as to be extended to the Pacific area in-  
7 stead of the Southwest Pacific area? I refer to exhibit  
8 1092 in evidence.

9           A   Yes, there the provision is for -- covers the  
10 Pacific area.

11          Q   Finally, after this question had remained un-  
12 settled for some time, did not the Japanese Government  
13 by this proposal of the 10th of November make the follow-  
14 ing statement: "That the Japanese Government recognizes  
15 the principle of non-discrimination in international  
16 commercial relations to be applied to all of the Pacific  
17 areas, inclusive of China, on the understanding that the  
18 principle in question is to be applied uniformly to the  
19 rest of the entire world as well." This is quoted from  
20 exhibit 1246 in evidence.

21          A   That is correct.

22          Q   On the same day, in conversation with Presi-  
23 dent Roosevelt, did not Ambassador NOMURA point out to  
24 the President that -- I quote -- "The Secretary of State  
25 has repeatedly pointed out to me that it has been his

NOTE:

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20,537

KAWABE

CROSS

1 A I heard that among the lower class officers  
2 there was some dissatisfaction but there were no  
3 incidents to back this up.

4 Q Did this Incident occur while Japanese troops  
5 were on maneuvers near Fengtai?

6 A Yes, it is as you say.

7 Q In the settlement of this Incident were the  
8 Chinese required to withdraw their troops from  
9 Fengtai?

10 A Yes, they were forced to withdraw their  
11 troops from Fengtai.

12 Q Then did the Japanese troops occupy Fengtai?

13 THE MONITOR: The witness' previous statement  
14 should be just "Yes" and the rest should be  
15 deleted.

16 A Fengtai had been used as a stationary place  
17 for the Japanese before this time.

18 Q Were the Japanese troops in Fengtai re-  
19 enforced after the Fengtai Incident?

20 A No, they were not reenforced.

21 Q I call your attention to one short paragraph  
22 of the testimony of General Ching Teh-chun, deputy  
23 commander of the 29th Army in North China, page 2316  
24 of the record.

25 THE MONITOR: Mr. Sutton, what are you

SHIBAYAMA

CROSS

## CROSS-EXAMINATION

1 BY MR. SUTTON:

2 Q When did you leave North China?

3 A In December of 1934.

4 Q Where were you at the time the so-called  
5 Ho-UMEZU agreement was made?

6 A I was the commander of the 18th Regiment  
7 in Kurume at that time.

8 Q And from whom did you receive your infor-  
9 mation relative to it?

10 A I heard directly from General UMEZU at  
11 a later date.

12 MR. SUTTON: I desire to call the Tribunal's  
13 attention to the fact that the evidence introduced  
14 on behalf of the prosecution with regard to this  
15 agreement is the testimony of John Goette, record  
16 page 3746 to 3749, the League of Nations Report,  
17 Exhibit 58, at page 3,300 in exhibit 2206-A.

18 There is no further cross-examination.

19 MR. LEVIN: I submit, Mr. President, that  
20 that is not cross-examination.

21 THE PRESIDENT: No, it is not, but he did  
22 cross-examine. I think he meant that.

23 MR. LEVIN: I ask that the witness be ex-  
24 cused on the usual terms.  
25



1 "Collection of Border Treaties between Manchukuo  
2 and the Union of Soviet Socialist Republic,"  
3 Compiled in July 1943, an official document of the  
4 Bureau of Treaties on which defense document 1510  
5 was based. All three Chinese texts were found to  
6 be identical. I submit that there can be no doubt  
7 that these are accurate copies of the Chinese text  
8 since there would be no motive in the powers of any  
9 of the three publishers for falsifying the Chinese  
10 text and that it should be received by the Tribunal  
11 as a copy, the original not being readily available,  
12 on what the Court calls "the usual terms."

13 MR. TAVENNER: If the Tribunal please,  
14 nevertheless the documents mentioned by counsel  
15 are not official documents. To show the doubt  
16 about the matter there is a difference in the  
17 translation between document 1510 and the one now  
18 being presented. If the original Chinese text of  
19 the treaty is obtained, it may develop that it is  
20 similar to one or the others of those presented  
21 by the defense.

22 THE PRESIDENT: Why can't we get the certified  
23 copy of the original itself by the person who has the  
24 custody of it?

25 MR. FURNESS: I want to say one thing, your

Honor please, is that we have already done it.

1           THE PRESIDENT: First tell me what is the  
2 purpose of introducing this document which has already  
3 been introduced? That is an inquiry by one of my  
4 colleagues.

5           MR. FURNESS: It is our contention, if your  
6 Honor please, that while the Russian text may be  
7 correctly translated, there is a difference between  
8 the Russian text and the Chinese text.

9           THE PRESIDENT: You are suggesting a difference  
10 between the originals.

11           MR. FURNESS: Yes. One is in Russian.

12           THE PRESIDENT: Is it a mere difference or  
13 something that matters?

14           MR. FURNESS: A real difference, your Honor;  
15 the difference between a border.

16           THE PRESIDENT: That being so, we would  
17 require certified copies of the originals by the  
18 person who has the custody and including the maps.

19           MR. FURNESS: We then request the Court to  
20 exercise its power, which it said it would, to obtain  
21 such document from the Government of China.

22           THE PRESIDENT: As I said before, how ludi-  
23 crous for a court like this to act on copies which may  
24 be wrong when the originals are available.  
25

1 kilometers north of the university.

2 Q How close was the Capital Restaurant to the  
3 nearest refugee zone?

4 A I recall -- I remember it as being about  
5 one and a half kilometers.

6 Q Which was the nearest refugee zone to the  
7 headquarters of General MATSUI?

8 A In my recollection there was only one  
9 refugee zone in Nanking.

10 Q Were all of the 200,000 refugees crowded  
11 on this one refugee zone?

12 A They were in one large area, but they were  
13 not crowded.

14 Q Was Ginling College within the refugee zone to  
15 which you refer?

16 A Yes.

17 Q How long did General MATSUI remain in Nanking?

18 A About one week after the capture of Nanking.

19 Q You state in your affidavit that he arrived  
20 on the 17th and left on the 20th. I take it you wish  
21 to amend that statement?

22 A I withdraw the word "one week". I was  
23 mistaken. The statement I have made in the affidavit  
24 is true.

25 Q I call your attention to the statement of

1           A    By the University of Nanking, I presume you  
2   to mean Ginling College. Yes, if that is the case.  
3   Is that what you mean?

4           Q    I mean the grounds of the University of  
5   Nanking, which is distinguished from Ginling College.

6           A    I have never seen the University of Nanking.

7           Q    Did you have occasion to inspect the grounds  
8   of Ginling College, on which--

9           A    Yes, twice.

10          Q    On which more than 20,000 women and girls  
11   were refugees?

12          A    I don't know exactly how many women and girls  
13   were taking refuge there, but I did see with my own  
14   eyes that there were women and girls taking refuge  
15   there.

16          Q    At how many places in the city of Nanking  
17   did you see dead bodies?

18          A    Two places.

19          Q    Did you inspect at night as well as by day?

20          A    Yes.  
21  
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1 MR. BLAKENEY: I will be glad to tender what  
2 counsel calls the title sheet. I have no objection.

3 COLONEL SMIRNOV: We are interested in all  
4 sheets of this map and besides we are interested in  
5 getting a certificate as to the original source of the  
6 map and the place this map was kept in custody. I can't  
7 agree with my learned colleague because I am trying to  
8 avoid being sensational before further study of the map  
9 but I think it necessary to study this map thoroughly  
10 and carefully. For this purpose I should have, at  
11 any rate, the original of the map tendered for identi-  
12 fication, and it is necessary for me to have such photo-  
13 copies of the document which would enable me to study  
14 it carefully by topographical and criminalistic  
15 methods.

16 THE PRESIDENT: They should be allowed to  
17 peruse them and they should be tendered for identifica-  
18 tion, not only the title sheet but all related parts.

19 COLONEL SMIRNOV: That is all we ask for.  
20 And besides we insist that the defense should produce  
21 certificate to this map.

22 THE PRESIDENT: When they come to tender it,  
23 we will have to consider that, certainly.  
24  
25

INOUE

DIRECT

1 to sustain his assertions, conclusions and opinions.

2 Paragraph six is the witness' explanation of  
3 kodo in relation to foreign ideology.

4 Paragraph seven is a statement by the wit-  
5 ness of what he terms the vicissitudes of kodo in  
6 history and is interspersed with opinions and attempts  
7 at elucidation.

8 Objection is made to the entire affidavit  
9 with the exception of paragraph two.

10 THE PRESIDINT: We will recess for fifteen  
11 minutes.

12 (Whereupon, at 1445, a recess was  
13 taken until 1500, after which the proceedings  
14 were resumed as follows, Major General Myron  
15 C. Cramer, now sitting:)  
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1 attributing anti-American movements and demonstra-  
2 tions in China to Japanese officials or to their  
3 influence in thus instigating the Chinese. The  
4 Ambassador handed me the attached paper which I  
5 proceeded to read. I thanked him for the attention  
6 his Government had given to this matter and the  
7 spirit seemingly prompting his Government to seek  
8 to clear it up.

9 "I then said that, having seen in the  
10 American press the purpose and nature of his con-  
11 templated call on me, I had requested the Far  
12 Eastern Division to jot down a list of instances  
13 of transgressions by Japanese or due to Japanese  
14 influence in China to the detriment and injury  
15 of Americans and of American interests. I added  
16 that this list of incidents had not been elaborated  
17 but that I would proceed to read them. I then read  
18 the memorandum prepared by the Far Eastern Division  
19 attached hereto and marked "A." The Ambassador  
20 appeared somewhat surprised and at a loss for  
21 further comment with regard to this paper. He said  
22 he would be pleased to have a copy of it. I replied  
23 that I would be glad to request the Far Eastern  
24 Division to put it in more elaborate form if possi-  
25 ble and to send a copy to him at the Japanese

1 have made the same pronouncement. You see, it is  
2 a question of weight. If better evidence is avail-  
3 able, and it ought to be, because I think at least  
4 one of the Members of the Cabinet is in the dock,  
5 we may take the view eventually, as what appears  
6 in the press is not supported by those who know --  
7 if that be the case, that the press report is of  
8 no value.

9 The attitude of my colleagues is that they  
10 are prepared to accept it as proof or some proof of  
11 the resignation of the cabinet, but not of the reasons  
12 for its resignation. The objection is overruled  
13 and the document admitted on the usual terms.

14 We were told that the document was marked  
15 for identification only and was not in evidence too.  
16 However, I understand it is not in fact in evidence.

17 CLERK OF THE COURT: Defense document 710  
18 is now marked admitted into evidence and will receive  
19 exhibit No. 2728.

20 (Whereupon, the document above  
21 referred to was marked defense exhibit  
22 No. 2728 and received in evidence.)

23 MR. CUNNINGHAM: (Reading)

24 "Statement of Premier HIRANUMA

25 "On August 28, the 14th year of Showa